

4 Official Opinions of the Compliance Board 186 (2005)

COMPLIANCE BOARD – AUTHORITY AND PROCEDURES – RESPONSE TO COMPLAINT – PUBLIC BODY’S FAILURE TO RESPOND VIOLATES ACT

December 5, 2005

*Mr. George F. Wiggers
Councilman, Town of Forest Heights*

On July 27, 2005, the Open Meetings Compliance Board received confirmation that you wished to proceed with a complaint, initially received on July 7, concerning notice of a meeting of the Town Council of Forest Heights on June 24, 2005. Specifically, the complaint alleged that the actions of the Mayor of Forest Heights, in forestalling posting of signs announcing the meeting and in omitting mention of it in a flyer distributed to Town residents, had resulted in the Council’s failure to comply with the notice provisions of the Open Meetings Act. The complaint also asked whether the alleged deficiency in the notice might result in a voiding of the budgetary actions taken at the meeting.

By letter of July 28, 2005, the Compliance Board, in accordance with the procedures specified in the Act, sent the complaint to Mayor Joyce Beck for a response. In a letter dated August 3, 2005, addressed to you but copied to the Compliance Board’s counsel, Mayor Beck indicated that she had referred the complaint to the Town Attorney for response. However, no response has been received, nor has any request for an extension of the time to respond been submitted.

Because of the lack of response, the record before the Compliance Board consists only of the factual assertions in the complaint. From some passages in her letter, we infer that the Mayor has a different view of what occurred. Under the circumstances, we decline to express an opinion on the matter.¹ We hold, however, that the Council of Forest Heights violated the Act because of its failure to respond

¹ The Act contemplates that an opinion might be issued on the basis of the facts in a complaint alone, when no response has been submitted. §10-502.5(c)(3) of the State Government Article, Maryland Code. However, the Act also authorizes the Compliance Board to issue an opinion stating its inability to resolve a complaint. §10-502.2(f)(2). Under the circumstances, we deem it preferable not to attempt to resolve an issue crucially dependent on the facts: What type of notice was given, what were the contents, and when was it given? Obviously, if no notice whatever was given, there was a violation. But we cannot assume this to be the case.

to the complaint. *See 3 Official Opinions of the Open Meetings Compliance Board 1 (2000) (Opinion 00-1).*

We also decline to address your question about the possible negation, under § 10-510 of the State Government Article, of actions taken by the Council at the June 24 meeting. This provision of the Act addresses *judicial* procedures and remedies. It is not for the Compliance Board to interpret the courts' authority. Nevertheless, we can point out that the Maryland Court of Appeals has held a local government's "entire budgetary process" to be excluded from judicial review under § 10-510. *Board of County Commissioners v. Landmark Community Newspapers*, 293 Md. 595, 607 (1982).

OPEN MEETINGS COMPLIANCE BOARD

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